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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 ROGER RANDOLPH,

9 Plaintiff,

10 v.

11 LCC CHAPLAIN CARRASCO, *et al.*,

12 Defendants.
13

Case No.: 3:17-cv-00506-MMD-WGC

Order

Re: ECF No. 58

14 Before the court is Plaintiff's Motion for Appointment of Counsel (ECF No. 58).¹ Plaintiff
15 bases his motion on (1) the fact that he has been granted in forma pauperis status and is unable to
16 afford counsel, (2) that the substantive issues and procedural matters in this case are too complex
17 for Plaintiff's comprehension and abilities, (3) that Plaintiff's incarceration will greatly limit his
18 ability to effectively investigate and litigate his case; and (4) that "the court has agreed in the past
19 that it was not convinced that L.C.C.'s paging system as a law library was adequate to satisfy
20 adequate access to the courts, especially when drafting criminal and or legal action." (*Id.* at 2.)

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23 ¹ This is actually Plaintiff's second request for appointment of counsel. *See*, ECF No. 15, denied on 12/6/18 in ECF No. 23.

1 As discussed in this court's prior order denying Plaintiff's motion for appointment of
2 counsel (ECF No. 23), a litigant in a civil rights action does not have a Sixth Amendment right to
3 appointed counsel. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). The United States
4 Supreme Court has generally stated that although Congress provided relief for violation of one's
5 civil rights under 42 U.S.C. § 1983, the right to access to the courts is only a right to bring
6 complaints to federal court and not a right to discover such claims or even to litigate them
7 effectively once filed with a court. *Lewis v. Casey*, 518 U.S. 343, 354-355 (1996).

8 In very limited circumstances, federal courts are empowered to request an attorney to
9 represent an indigent civil litigant. The circumstances in which a court will grant such a request,
10 however, are exceedingly rare, and the court will grant the request under only extraordinary
11 circumstances. *United States v. 30.64 Acres of Land*, 795 F.2d 796, 799-800 (9th Cir. 1986);
12 *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986).

13 As this court also advised Plaintiff when it denied Plaintiff's first motion for appointment
14 of counsel (ECF No. 23), a finding of such exceptional or extraordinary circumstances
15 requires that the court evaluate both the likelihood of Plaintiff's success on the merits and the
16 *pro se* litigant's ability to articulate his claims in light of the complexity of the legal issues
17 involved. Neither factor is controlling; both must be viewed together in making the finding.
18 *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991), *citing Wilborn, supra*, 789 F.2d at 1331.
19 Plaintiff has shown an ability to articulate his claims. (ECF Nos. 1, 15, 22, 36, 40, 50, 52.)

20 In the matter of a case's complexity, the Ninth Circuit in *Wilborn* noted that:

21 If all that was required to establish successfully the
22 complexity of the relevant issues was a demonstration of
23 the need for development of further facts, practically all
cases would involve complex legal issues. Thus,
although *Wilborn* may have found it difficult to
articulate his claims *pro se*, he has neither demonstrated
a likelihood of success on the merits nor shown that the

1 complexity of the issues involved was sufficient to
2 require designation of counsel.

3 The Ninth Circuit therefore affirmed the District Court's exercise of discretion in denying
4 the request for appointment of counsel because the Plaintiff failed to establish the case was
5 complex as to facts or law. 789 F.2d at 1331.

6 Despite Plaintiff's characterization of this action as being complicated, the substantive
7 claims involved in this action are not unduly complex. On screening, the court allowed Plaintiff to
8 proceed with the following claims in his civil rights complaint under 42 U.S.C. § 1983: an equal
9 protection claim based on religion in Count I against Dalton, Carrasco, Chandler, Baker and East;
10 a First Amendment free exercise of religion claim in Count II against Dalton, Carrasco, Chandler
11 and Baker; an equal protection claim based on race in Count III against Baker, Chandler, Dalton
12 and Carrasco; and, State law intentional infliction of emotional distress and negligence claims in
13 Count IV against Baker, Carrasco, Chandler and Dalton. (ECF No. 7 at 10, 11.)

14 Similarly, with respect to the other *Terrell* factor, Plaintiff has failed to convince the court
15 of the likelihood of success on the merits of his claims.

16 While any *pro se* inmate such as Mr. Randolph would likely benefit from services of
17 counsel, that is not the standard this court must employ in determining whether counsel should be
18 appointed. *Wood v. Housewright*, 900 F.2d 1332, 1335-1336 (9th Cir. 1990).

19 The court does not have the power "to make coercive appointments of counsel."
20 *Mallard v. U. S. Dist. Ct.*, 490 US 296, 310 (1989). Thus, the court can appoint counsel only under
21 exceptional circumstances. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) [cert den 130
22 S.Ct. 1282 (2010)]. Plaintiff has not shown that the exceptional circumstances necessary for
23 appointment of counsel are present in this case.

1 In the exercise of the court's discretion, it **DENIES** Plaintiff's Motion to Appoint Counsel
2 (ECF No. 58).

3 **IT IS SO ORDERED.**

4 Dated: February 19, 2020.

5 *William G. Cobb*

6 William G. Cobb
7 United States Magistrate Judge
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